

## **HEALTH AND SENIOR SERVICES**

### **DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH**

#### **Worker and Community Right to Know Act Rules**

**Proposed Readoption with Amendments: N.J.A.C. 8:59**

**Proposed Repeals: N.J.A.C. 8:59-6.2, 6.5, 6.6, and 12**

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services

Authority: N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-411

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Friday, December 10, 2004

10:00 A.M.

Health and Agriculture Building

John Fitch Plaza

First Floor Auditorium

Trenton, New Jersey

Submit written comments by December 31, 2004 to:

Richard Willinger, Program Manager

Right to Know Program

NJ Department of Health and Senior Services

PO Box 368

Trenton, NJ 08625-0368

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The agency proposal follows:

#### **Summary**

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:59, Worker and Community Right to Know Act Rules, is scheduled to expire on March 23, 2005. The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1, et seq. (the Act), was enacted in order to establish a comprehensive system for the disclosure and dissemination of information to public employees, emergency responders, and community residents regarding hazardous substances in the workplace and in the environment. The system established under the Act includes maintenance of an inventory of hazardous substances at public employer facilities on survey forms, labeling of containers at covered private and public employer facilities, education and training of public employees and emergency

responders who are exposed or potentially exposed to hazardous substances, and making surveys and hazardous substance fact sheets available to employees, emergency responders and community residents. The Department of Health and Senior Services (DHSS) has reviewed N.J.A.C. 8:59 and, with the exception of the amendments described below, has determined the existing rules to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the DHSS proposes that N.J.A.C. 8:59 be readopted with amendments.

The DHSS is proposing the repeal of all provisions within the chapter pertaining to the requirement that public employers establish education and training programs for their employees. These provisions appear primarily within Subchapter 6, Education and Training Program – For Public Employers. However, there are also secondary provisions regarding education and training programs which appear within N.J.A.C. 8:59-1.3, Definitions, and 8:59-8.2, Civil Administrative Penalties. In addition, the DHSS is proposing the repeal of Subchapter 12, which pertains to the certification of consultants and consulting agencies which provide Right to Know education and training programs to public employers.

The reason for these proposed repeals is that on January 11, 2001, the United States Department of Labor, Occupational Safety and Health Administration (OSHA) approved the New Jersey Public Employees Only State Plan (New Jersey State Plan), a State Occupational Safety and Health Plan applicable only to public sector employees of the State and its political subdivisions. Under the New Jersey State Plan, and pursuant to 29 U.S.C. §667, OSHA requires that the New Jersey Department of Labor and Workforce Development (DLWD), as the “designated State agency,” establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions and that this program contain standards which are at least as effective in providing safe and healthful employment and places of employment as the standards promulgated by OSHA. In order to comply with the OSHA requirements under the New Jersey State Plan, the legislature passed N.J.S.A. 34:6A-30, which provides in pertinent part that the Commissioner of the DLWD shall provide for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary of the United States Department of Labor under the authority of the Occupational Safety and Health Act of 1970. The law further provides that whenever the Secretary of the United States Department of Labor adopts a standard pursuant to the provisions of the Occupational Safety and Health Act of 1970, the Commissioner of the DLWD, “shall publish that federal standard in the New Jersey Register...and...that federal standard shall be deemed to be duly adopted as a State regulation upon its publication by the Commissioner (of the DLWD).” Among the Federal OSHA standards adopted by the DLWD pursuant to the directive found at N.J.S.A. 34:6A-30 is the Hazard Communication Standard, which the DLWD adopted with amendments on May 3, 2004 by publication of notice in the New Jersey Register at 36 N.J.R. 2244(a). This amended Hazard Communication Standard includes virtually all of the same requirements pertaining to the education and training of public employees as is currently found at N.J.A.C. 8:59-6, the DHSS’s rules entitled, “Education and Training Program – For Public Employees.”

Consequently, in the interest of promoting efficient and effective government by eliminating duplicative enforcement of the same requirements by two different agencies,

the DHSS and the DLWD have agreed that the DLWD will enforce the education and training requirements for public employers in New Jersey which, prior to now, had been enforced by the DHSS under the Act. The DLWD, therefore, has adopted rules at N.J.A.C. 12:100-7, for the express purpose of enforcing the education and training requirements. These rules not only adopt the Federal Hazard Communication Standard, but also incorporate those requirements from N.J.A.C. 8:59-6 (DHSS rules), which exceed the Federal Hazard Communication Standard, thereby ensuring that public employees in New Jersey will suffer no diminution in protection from hazardous substances and unsafe conditions by virtue of this shift in regulatory responsibility.

Finally, since the DHSS will no longer be enforcing the “Right to Know” education and training requirements found within N.J.A.C. 8:59-6, and since, in any event, certification as a “Right to Know” trainer would fail to qualify a consultant or consulting agency to conduct education and training programs under the new Public Employees Occupational Safety and Health (PEOSH) Hazard Communication Standard found within the DLWD’s PEOSH rules at N.J.A.C. 12:100-7, the DHSS will also cease issuing certifications to consultants and consulting agencies who conduct “Right to Know” education and training programs. Consequently, the DHSS is proposing the repeal of N.J.A.C. 8:59-12, Certification of Consultants and Consulting Agencies for Public Employers. It is now the province of the DLWD to determine whether it will or will not issue certifications to consultants and consulting agencies to conduct PEOSH Hazard Communication Standard education and training programs.

The DHSS is also proposing that the definition of the term “employer,” found at N.J.A.C. 8:59-11.3(b), be amended so as to replace the outdated Standard Industrial Classification (SIC) codes with North American Industry Classification System (NAICS) codes, commensurate with the Federal government’s replacement of the SIC coding system with the NAICS coding system, pursuant to the 1993 North American Free Trade Agreement (NAFTA).

The New Jersey Department of Environmental Protection (DEP), pursuant to P.L. 2003, c. 157, has identified within the NAICS coding system the equivalent universe of employers and facilities under the SIC coding system that are covered by the Act. The DHSS’s proposed amendment of N.J.A.C. 8:59-11.3(b) simply redefines the existing regulated community under the Act in terms of NAICS codes. The purpose of the proposed amendments is to ensure that all currently regulated employers will continue to be regulated and that no new categories of employers will become subject to the Act.

The DHSS is also proposing a number of technical amendments throughout the chapter to correct errors and to reflect a change in organizational designation. Specifically, the DHSS is proposing that N.J.A.C. 8:59-3.4(e) be amended to reflect a change in the name of the office which includes the DEP’s Community Right to Know program from the “Bureau of Chemical Release Information and Prevention,” to the “Office of Pollution Prevention and Right to Know.” In addition, the Department is proposing that the wording within N.J.A.C. 8:59-7.2(d) and (e), be amended so as to indicate that the pertinent information shall be provided by the employer to the employee or employee representative, “as soon as possible, but at the latest within five working days,” rather than, “as soon as possible, but at the least within five working days.” Replacement of the word “least” with the word “latest,” is intended to correct an error and does not affect the meaning of the rule.

A summary of the subchapters of N.J.A.C. 8:59 follows:

N.J.A.C. 8:59-1 sets forth the general provisions of this chapter. Specifically, it indicates that the authority for the rules contained within the chapter can be found in the Act. It sets forth the purpose of the chapter. It also defines words and terms to be used throughout the chapter and indicates which covered employers are exempt from the provisions of the Act. Finally, it establishes that the provisions of the chapter are “severable;” in other words, if any provisions of the chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of the chapter.

The DHSS is proposing that N.J.A.C. 8:59-1.3 be amended so as to eliminate definitions of the following terms: “Certified Industrial Hygienist,” “Certified Safety Professional,” “consultant,” “consulting agency,” “providing,” and “technically qualified person.” Each of these terms is used solely within those sections of the chapter pertaining to education and training programs for public employers and/or the certification of consultants and consulting agencies for public employers. The DHSS’ proposal that these definitions be deleted is part of the overall repeal of DHSS rules regarding education and training programs for public employers and the certification of consultants and consulting agencies for public employers.

N.J.A.C. 8:59-2 explains each public employer’s duty to report the presence of hazardous substances at its facilities and sets forth the methods by which public employers shall comply with this requirement, including the completion of Right to Know Surveys.

N.J.A.C. 8:59-3 addresses trade secret claims filed by employers who are subject to the Act. It sets forth the procedure for filing trade secret claims and maintaining trade secret information, the information required by the DHSS for determination of trade secret claims, the methods for maintaining the confidentiality and security of trade secret information, the criteria for determination of trade secret claims, the procedure for requesting trade secret information, the procedure for appeal of a determination of trade secret claims, and the procedure for the disclosure of trade secret information.

As explained earlier, the DHSS is proposing that N.J.A.C. 8:59-3.4(e) be amended to reflect a change in the name of the office which includes the DEP’s Community Right to Know program from the “Bureau of Chemical Release Information and Prevention,” to the “Office of Pollution Prevention and Right to Know.”

N.J.A.C. 8:59-4 concerns the preparation, maintenance and distribution of hazardous substance fact sheets and material safety data sheets for the benefit of public employees. The subchapter sets forth the required contents of the hazardous substance fact sheet, the method by which it is generated and distributed to public employers, and the procedures to be followed with regard to the preparation, maintenance and distribution of a hazardous substance fact sheet when an employer has filed a trade secret claim.

N.J.A.C. 8:59-5 addresses the labeling of containers. It sets forth labeling requirements for public and private employers, alternative requirements for research and development laboratories, and exceptions to and exclusions from the labeling requirements.

N.J.A.C. 8:59-6 concerns education and training programs for public employers. As explained earlier, the DHSS is proposing that the majority of this subchapter be

repealed due to the transfer of responsibility for enforcing the education and training requirements for public employers from the DHSS to the DLWD. The DHSS does, however, propose that certain limited provisions within N.J.A.C. 8:59-6 be retained either because responsibility for enforcement of those particular requirements has not been transferred to the DLWD as part of the adoption of the New Jersey State Plan, or because retaining those particular provisions is necessary for the orderly transfer of responsibility for enforcing the education and training requirements for public employers from the DHSS to the DLWD.

Specifically, the DHSS is proposing that an informational cross-reference to the DLWD PEOSH Hazard Communication Standard be added at N.J.A.C. 8:59-6.1(a).

The DHSS is also proposing the retention, until after the Department has completed its receipt of the 2003 Right to Know Surveys, of N.J.A.C. 8:59-6.1(d), which requires that public employers attach to their Right to Know Surveys a certification that employees who are exposed or are potentially exposed to hazardous substances in the course of their employment during 2003 have received education and training.

The DHSS is proposing the retention of N.J.A.C. 8:59-6.1(e), which requires that public employers maintain a written record of training given to employees. The DHSS proposes adding the phrase, “prior to the adoption of the PEOSH Hazard Communication Standard on May 3, 2004,” so as to make clear that although the responsibility for enforcing education and training requirements has shifted to the DLWD, effective May 3, 2004, all public employers shall maintain those records compiled under the Right to Know rules prior to May 3, 2004 and make those records available for PEOSH inspection so as to ensure an orderly transition from the DHSS to the DLWD.

The DHSS is proposing that N.J.A.C. 8:59-6.3(d) and (e) be retained because the requirements contained therein are still enforceable by the DHSS. Specifically, N.J.A.C. 8:59-6.3(d) requires that every public employer shall post on bulletin boards or in other conspicuous areas in the facility any posters designed and provided by the DHSS to inform employees of their rights under the Act and N.J.A.C. 8:59-6.3(e) requires that research and development laboratories shall provide their employees with appropriate hazardous substance fact sheets and available material safety data sheets. N.J.A.C. 8:59-6.3(e) currently requires that fact sheets and material data sheets be made available as part of the employer’s education and training program; however, since the DHSS has eliminated its education and training program, it proposes that the rule require such information to be made available, “upon request.”

The DHSS is proposing the retention of N.J.A.C. 8:59-6.4(a), which requires that public employers must maintain documentation of all initial and biennial Right to Know education and training programs. The DHSS proposes adding the phrase, “given to employees prior to the adoption of the PEOSH Hazard Communication Standard on May 3, 2004,” so as to make clear that although the responsibility for enforcing education and training requirements has shifted to the DLWD, effective May 3, 2004, all public employers shall maintain those records compiled under the Right to Know rules prior to May 3, 2004 and make those records available for PEOSH inspection so as to ensure an orderly transition from the DHSS to the DLWD.

The DHSS is proposing the retention of N.J.A.C. 8:59-6.4(c), which requires that public employers must maintain rosters of attendance and other records pertaining to initial and biennial Right to Know education and training programs. The DHSS

proposes, (1) adding the phrase, “Right to Know,” before “education and training programs,” (2) replacing “Right to Know Enforcement Officer” with “Public Employees Occupational Safety and Health (PEOSH) Inspector,” (3) replacing “approves” with “determines compliance with,” and (4) deleting the phrase, “during an inspection, after which time this material may be disposed of for programs conducted prior to the year of inspection.” Each of these changes, like those described above, is intended to convey that records compiled by covered employers prior to the May 3, 2004 transfer of responsibility from the DHSS to the DLWD shall be retained for inspection by DLWD staff and that for covered employers to dispose of those records will still be considered a violation of DHSS rules.

N.J.A.C. 8:59-7 addresses employee and public access to Right to Know information, setting forth the DHSS’s obligations, the employers’ obligations and the county health department, county clerk, or designated county lead agency’s obligations in this regard.

As explained earlier, the DHSS proposes that the wording within N.J.A.C. 8:59-7.2(d) and (e) be amended so as to indicate that the pertinent information shall be provided by the employer to the employee or employee representative, “as soon as possible, but at the latest within five working days,” rather than, “as soon as possible, but at the least within five working days.” Replacement of the word “least” with the word “latest,” is intended to correct an error and does not affect the meaning of the rule.

N.J.A.C. 8:59-8 concerns enforcement of the Act, setting forth the DHSS’ authority under the Act to issue orders of compliance, levy administrative penalties and bring actions for civil penalties. The subchapter also addresses the issue of standing to sue under the Act, the right of the DHSS to enter an employer’s facility to inspect, the procedures to be followed during a DHSS inspection, the right of individuals to file complaints with the DHSS regarding violations of the Act, and the requirement that employers post orders, penalties and notices of contest.

N.J.A.C. 8:59-9 addresses the Right to Know Hazardous Substance List, explaining the contents of the list and the method for making modifications to the list.

N.J.A.C. 8:59-10 concerns the Special Health Hazard Substance List, explaining the contents of the list and the method for making modifications to the list.

N.J.A.C. 8:59-11 sets forth the Community Right to Know requirements to which private employers are subject, including the completion of Community Right to Know Surveys, proper labeling of containers, and adherence to the provisions of N.J.A.C. 8:59-9 and 10 regarding the Right to Know Hazardous Substance List and Special Health Hazard Substance List, respectively.

As explained earlier, the DHSS is proposing that the definition of the term, “employer,” found at N.J.A.C. 8:59-11.3(b), be amended so as to replace the outdated Standard Industrial Classification (SIC) codes with North American Industry Classification System (NAICS) codes, commensurate with the Federal government’s replacement of the SIC coding system with the NAICS coding system, pursuant to the 1993 North American Free Trade Agreement (NAFTA).

N.J.A.C. 8:59-12 addresses the certification of consultants and consulting agencies which provide Right to Know education and training programs for public employers. As explained earlier, the DHSS is proposing that this subchapter be repealed.

As the DHSS has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The social impact of these rules has been positive, improving the health and welfare of New Jersey's public employees, emergency responders and community residents. Since promulgation of these rules, hundreds of thousands of public employees have been trained and retrained about the health and safety hazards of the hazardous substances with which they work and to which they are exposed or potentially exposed, how to handle these substances properly, and what actions to perform in the case of a spill or other emergency. Thousands of firefighters, police officers and other emergency responders have been trained on how to handle spills and other emergencies involving hazardous substances.

Since promulgation of these rules, vital information has been provided to public employees and emergency responders through labels on containers to identify the contents and enable determination of the hazards and how to handle the material properly during normal working conditions and in emergencies. Similarly, vital information has been provided to public employees, emergency responders and community residents by the identification of hazardous substances present at public workplaces through Right to Know Surveys that contain inventories of these hazardous substances. Important health and safety information has been provided to employees, citizens, firefighters, health agencies, hospitals, local, county, state and Federal agencies, and others about hazardous substances through hazardous substance fact sheets prepared by the Department in both English and Spanish.

Such information serves to improve the health and safety of public employees, emergency responders and members of the public. The rules also enable firefighters, police, local government agencies and the public to evaluate risks to community safety and public health and plan for emergencies.

Education and information are critical to helping people protect themselves from being injured, from property being destroyed, and from contaminating the environment. Education and information will prevent the deaths and illnesses caused by exposure to asbestos, benzene, silica, and other chemicals that have occurred in the past from occurring in the future. The Worker and Community Right to Know Act recognizes that society will always use hazardous substances in the workplace and transport them on the roads, and that new testing of hazardous substances is taking place every day. Therefore, it will always be necessary to convey information about hazardous substances to new employees and emergency responders, and convey new information to existing employees, emergency responders and the public.

The worker and community protection provisions of the chapter benefit approximately 1,600 public employers, 500,000 public employees, tens of thousands of emergency responders in fire and police departments and emergency management agencies, plus the individual citizens of the State.

With regard to the proposed repeal of the DHSS' education and training rules, as explained earlier, this measure is suggested in the interest of promoting efficient and effective government by eliminating duplicative enforcement of the same requirements

by two different agencies. The DLWD rules at N.J.A.C. 12:100-7 include not only the Federal Hazard Communication Standard, but also incorporate those requirements from N.J.A.C. 8:59-6 (DHSS rules), which exceed the Federal Hazard Communication Standard, thereby ensuring that public employees in New Jersey will suffer no diminution in protection from hazardous substances and unsafe conditions by virtue of this shift in regulatory responsibility.

In fact, the health of public employees will be afforded greater protection because of the DLWD's adoption of the PEOSH Hazard Communication Standard with added provisions imported from the repealed DHSS rules. The DHSS provisions now included in the DLWD rules include those requiring that, (1) refresher training must be provided every two years, during working hours, at no cost to employees, (2) a "technically qualified person" must be used to conduct training, and (3) training records must be maintained.

In addition, due to the New Jersey State Plan designation which requires the adoption of Federal OSHA standards including the Federal Hazard Communication Standard, the State is entitled to funding from OSHA, which funding will enable the hiring of additional inspectors and consultants. Therefore, the social impact of the proposed amendments is entirely positive in that these amendments promote the more efficient use of government resources, will result in Federal funding which, in turn, will enable the hiring of more inspectors and consultants, and will increase the level of protection afforded workers in the area of education and training.

The proposed amendment to convert SIC codes to NAICS codes under the Worker and Community Right to Know Act will not expand the regulated universe to include businesses not currently regulated by the Act, nor will it remove currently regulated businesses from coverage. Accordingly, the amendment is expected to have a neutral impact.

### **Economic Impact**

The Worker and Community Right to Know Act increases the cost of doing business for private companies having NAICS codes (formerly SIC codes) covered by the Act, and for public agencies. The costs include the annual fee assessment of \$4.00 per employee (\$75.00 minimum), raised after 20 years in 2003, and the cost of labeling containers that are purchased and/or manufactured. The cost of compliance increases with the number of containers that need to be labeled and could range from no expense for employers who purchase containers already properly labeled, to thousands of dollars for employers who need to label many containers of manufactured products or who have purchased containers that need to be relabeled.

For public employers, costs are incurred in allocating staff time to perform inventories and fill out Right to Know Surveys, allowing employees to attend training sessions, allocating staff time to label containers, purchasing materials needed by staff to perform these activities, and/or hiring consultants to perform these activities.

The actions taken by private and public employers to comply with the requirements of the Worker and Community Right to Know Act have reduced illnesses and injuries among public employees, including pain and suffering, have prevented and reduced damage to physical facilities and the environment, and have enabled emergency responders to respond more appropriately and quickly to reduce personal injury and



damage to physical property and the environment from fires and spills involving hazardous materials.

There should be no economic impact to public employers resulting from the proposed repeal of the DHSS' education and training rules, because public employers will continue to be responsible for complying with similar requirements under the recently adopted PEOSH Hazard Communication Standard. See N.J.A.C. 12:100-7.

There may be an economic benefit to private consultants and consulting agencies which will likely be hired by public employers and/or joint insurance funds in order to assist in assuring compliance by public employers with the newly adopted PEOSH Hazard Communication Standard.

The proposed conversion from SIC codes to NAICS codes under the Worker and Community Right to Know Act will not expand the regulated universe to include businesses not currently regulated by the Right to Know Act, nor will it remove currently regulated businesses from coverage. Accordingly, the amendment is not anticipated to have either a positive or negative economic impact.

### **Federal Standards Statement**

There are no Federal standards or requirements applicable to the rules proposed for readoption and the proposed amendments. As a result, a Federal standards analysis is not required.

### **Jobs Impact**

The DHSS expects the rules proposed for readoption with amendments to neither generate additional jobs, nor result in the loss of existing jobs.

### **Agriculture Industry Impact**

The Worker and Community Right to Know Act regulates Right to Know labeling in certain segments of the agriculture industry as specified by the NAICS codes (formerly SIC codes) contained in the proposed amendments. They include lawn and garden services, food and tobacco product manufacturers, and businesses involved in the wholesale trade of beer and ale, wines and distilled alcoholic beverages, farm supplies, flowers, nursery stock and florists' supplies, and tobacco and tobacco products.

There are many provisions in the rules which mitigate the burden of compliance with Right to Know labeling on the agricultural industry, such as a complete exemption from Right to Know labeling for containers that contain raw food materials, food additives, and finished food products intended for human or animal consumption which are regulated by Federal law, and an exemption for all other materials regulated by the Federal Food, Drug, and Cosmetic Act up to a 55 gallon or 450 pound container. The readoption of the rules will not cause any additional costs to be incurred by the agriculture industry.

There will be no economic impact on the agriculture industry as a result of the proposed amendments repealing education and training and consultant certification requirements, because the amendments only affect public employers.

The proposed amendment to convert SIC codes to NAICS codes under the Worker and Community Right to Know Act will not expand the regulated universe to include businesses not currently regulated, nor will it remove currently regulated

businesses from coverage under the Right to Know Act. Accordingly, the amendment is not anticipated to have an impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

Approximately 33,000 private employers are covered by the Worker and Community Right to Know Act. Of these, the majority are considered to be small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are affected by the existing rules through the labeling requirements, which will continue to apply after the readoption with amendments.

There are many provisions in the rules which mitigate the burden of compliance with Right to Know labeling for small businesses, such as a threshold on container size below which Right to Know labeling may not be required, the permitted use of labeling from ten Federal labeling laws instead of Right to Know labeling, the use of alternative labeling for various types of containers, the use of U.S. Department of Transportation labeling in certain circumstances, the use of OSHA Laboratory Standard labeling for approved research and development laboratories, and the exclusion from Right to Know labeling of consumer products that are not used more frequently than a consumer would use them. These and other mitigating provisions can be found at N.J.A.C. 8:59-5.

In developing the proposed readoption of N.J.A.C. 8:59 with amendments, the Department balanced the need to protect public safety and the environment against the economic impact of the readoption and has determined that to further minimize the impact of the rules on small businesses would endanger the environment, public safety, and the health and safety of emergency responders, and, therefore, no further exemptions to labeling are provided based on business size.

As to the anticipated impact on small businesses resulting from the proposed repeal of the “Right to Know” education and training rules, including the consultant certification program, consulting agencies and consultants which have traditionally been certified by the DHSS to conduct “Right to Know” training, will no longer be required to pay initial and renewal certification fees. The proposed repeal of these rules may encourage those who had not been certified to conduct “Right to Know” training under the DHSS rules, to begin providing PEOSH Hazard Communication training.

The proposed amendment to convert SIC codes to NAICS codes under the Worker and Community Right to Know Act will not expand the regulated universe to include businesses not currently regulated, nor will it remove currently regulated businesses from coverage under the Right to Know Act. Any small businesses regulated under the Right to Know Act will continue to be regulated. The amendment does not impose any additional requirements on those businesses and there should be no additional costs incurred by those businesses as a result of the adoption of the amendment.

### **Smart Growth Impact**

The DHSS does not anticipate that the rules proposed for readoption with amendments will have any impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan, with the sole exception that information reported on Right to Know Surveys which indicates the presence of hazardous substances in public facilities could be used to determine what types of facilities should not be located next to one another.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

**Full text** of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:59-6.2, 6.5, 6.6, and 12.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions shown in brackets [thus]):

### 8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

...

["Certified Industrial Hygienist" means a person who has been certified by the American Board of Industrial Hygiene (ABIH), 4600 West Saginaw, Suite 101, Lansing, Michigan 48917-2737, (517) 321-2638.

"Certified Safety Professional" means a person who has been certified by the Board of Certified Safety Professionals (BCSP), 208 Burnwash Avenue, Savoy, Illinois 61874, (217) 359-9263.]

...

["Consultant" means a person who is a technically qualified person, as specified in N.J.A.C. 8:59-1.3, who conducts Right to Know education and training programs for public employees, pursuant to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration.

"Consulting agency" means an individual who meets, or a corporation or partnership which employs persons who meet, the criteria for a technically qualified person as specified in N.J.A.C. 8:59-1.3. and which develops and provides training objectives, outlines, teaching materials and evaluation tools for the Right to Know education and training program to public employers according to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. An individual consultant may also be a consulting agency at the same time.]

...

["Providing" means the selling of a written program along with corresponding materials.]

...

["Technically qualified person" means:

1. For training purposes, a person who is a registered nurse, a certified safety professional, or a certified industrial hygienist, or has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances;
2. For training purposes, a person who has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association,

private organization or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The 30-hour requirement may be met by the combination of one or more hazardous materials training courses;

3. For training purposes, a person who has successfully completed a Department of Health and Senior Services approved instructor training course;

4. For purposes of teaching the recruit firefighting training course established by the Department of Community Affairs, a person who has fulfilled the requirements of Firefighter Instructor Level I as certified by the Department of Community Affairs;

5. For training purposes, a person who has received certification pursuant to N.J.A.C. 8:59-12; or

6. In a research and development laboratory, a person who has a bachelor's degree in industrial hygiene, environmental science, chemistry, or a related field, and understands the health risks associated with exposure to the hazardous substances used in the research and development laboratory.]

...

### SUBCHAPTER 3. TRADE SECRETS

#### 8:59-3.4 General provisions

(a) - (d) (No change.)

(e) All documents containing the information claimed to be a trade secret and supporting information which are submitted, shall be submitted to the appropriate Department by certified mail return receipt requested, by personal delivery, or by other means which requires verification of receipt, the date of receipt, and the name of the person who receives the document at the Department. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know Program  
New Jersey Department of Health and Senior Services  
PO Box 368  
Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, [Bureau of Chemical Release Information and Prevention] **Office of Pollution Prevention and Right to Know**  
New Jersey Department of Environmental Protection  
PO Box 405  
Trenton, NJ 08625-0405

(f) - (l) (No change.)

### SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM – FOR PUBLIC EMPLOYERS

#### 8:59-6.1 General provisions

[(a) Every public employer shall establish an education and training program for its employees, which shall be provided on paid employer time, except for volunteers, and shall:

1. Inform employees in writing and orally of the potential health and safety risks of the hazardous substances listed on the Right to Know Hazardous Substance List and the particular hazards of mixtures listed on material safety data sheets that contain one or more hazardous substances, to which they are exposed or are potentially exposed in the course of their employment; and

2. Train them in the proper and safe procedures for handling the hazardous substances under all circumstances.]

**(a) The requirements for training public employees about hazardous chemicals can be found in the PEOSH Hazard Communication Standard, N.J.A.C. 12:100-7, adopted by the New Jersey Department of Labor and Workforce Development and enforced by the Public Employees Occupational Safety and Health (PEOSH) Programs in the Department of Labor and Workforce Development and the Department of Health and Senior Services.**

[(b) All education and training programs shall comply with N.J.A.C. 8:59-6.3.

(c) A public employer shall use a technically qualified person to conduct its education and training program.]

**(b)– (c) (Reserved)**

(d) All public employers shall submit, attached to their Right to Know Survey, a certification that employees who are exposed or are potentially exposed to hazardous substances in the course of their employment, have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 within the deadlines set forth in N.J.A.C. 8:59-6.2. Research and development laboratories shall certify by letter that all employees have received an education and training program which meets the requirements of N.J.A.C. 8:59-6.3 by January 1 of each year. **This requirement shall end after the 2003 Right to Know Survey.**

(e) Public employers shall maintain a written record of training given to employees **prior to the adoption of the PEOSH Hazard Communication Standard, on May 3, 2004.** This record, at a minimum, shall describe the training, the date or dates on which it was given, the names and signatures of the employees, and the person conducting the training. These records shall be maintained by the public employer for the duration of each employee's employment and shall be made available to the Department upon request.

[(f) Municipalities shall be responsible for providing the education and training program to the volunteer firefighters in their municipality.]

## **8:59-6.2 (Reserved)**

### **8:59-6.3 Contents of program**

[(a) The design of an acceptable education and training program shall include a definition of objectives including cognitive and behavioral goals, technically qualified instructors, and a method to evaluate the effectiveness of the program.

(b) An education and training program for employees shall contain, at a minimum, the following:

1. A general overview of occupational health including an explanation of:
  - i. The common methods used to recognize occupational health and safety hazards;
  - ii. The common methods used to measure and evaluate employee exposure to hazardous substances;
  - iii. The common methods used to prevent and control employee exposure to hazardous substances including methods which 1) eliminate the source of the contaminant; 2) prevent dispersion of the contaminant; and 3) provide personal employee protection;
2. An explanation of the nature of and potential health and safety risks, including acute and chronic effects and symptoms of effects of exposure, of the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, as set forth in the hazardous substance fact sheets, material safety data sheets, and other sources. Hazardous substances with similar health and safety risks may be grouped together for purposes of explanation;
3. An explanation of the proper and safe procedures for handling, under all circumstances, the hazardous substances to which the employees are exposed or potentially exposed in the course of their employment, including the use and functioning of personal protective equipment, the policy and program for use of respirators, appropriate emergency treatment for exposure, procedures for cleanup of leaks and spills, and any special use conditions. This shall include an explanation about any operations in the work area which use hazardous substances. Employees who use personal protective equipment shall be given “hands-on” training in the proper use and functioning of personal protective equipment and the trainer shall disinfect the equipment before each reuse. Employees who use cleanup and firefighting equipment shall be given “hands-on” training in the use of cleanup and firefighting equipment. If a respirator is required to be worn by an employee, the employer shall comply with the requirements of the Public Employees Occupational Safety and Health Act’s (PEOSHA) Respiratory Protection Standard, 29 CFR Part 1910.134, in lieu of the provisions above in the paragraph pertaining to respirators. If employees need to use other personal protective equipment, the employer shall comply with the appropriate PEOSHA Standard for Eye and Face Protection (29 CFR 1910.133), Head Protection (29 CFR 1910.135), Foot Protection (29 CFR 1910.136), Hand protection (29 CFR 1910.138), and General requirements (29 CFR 1910.132), in lieu of the provisions above in this paragraph pertaining to personal protective equipment;
4. Information regarding the provisions of the Worker and Community Right to Know Act:
  - i. A general explanation of the Right to Know survey and the substances listed on the employer’s Right to Know survey, including distribution of a sample page of a survey;

- ii. An explanation of the employer's obligation to label containers in its facility with chemical or common names and Chemical Abstracts Service numbers;
  - iii. A general explanation of hazardous substance fact sheets and material safety data sheets and distribution of a sample fact sheet and material safety data sheet;
  - iv. A description of the existence, location, and hours of operation of the central file maintained by the employer for storing the Right to Know survey and appropriate hazardous substance fact sheets and material safety data sheets;
  - v. An explanation of the employee's right and relevant procedures to obtain a copy of the Right to Know Survey, hazardous substance fact sheets and material safety data sheets from the employer, from the county health department, county clerk, or designated county lead agency, or from the Department of Health and Senior Services; to obtain copies from the county health department, county clerk, or designated county lead agency, and Department of Health and Senior Services in confidence; and the employer's obligation to supply, without cost, copies of the Right to Know Survey and appropriate hazardous substance fact sheets to employees and, where appropriate and available, material safety data sheets, within five working days of a request;
  - vi. An explanation of the employee's right to refuse to work with a hazardous substance for which a request was made for a Right to Know survey, appropriate hazardous substance fact sheet, the chemical name and Chemical Abstracts Service number of a substance in a container which is not labeled pursuant to N.J.A.C. 8:59-5, or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request; the employee's right not to lose pay or forfeit any other privilege until the request is honored and not to be discharged, disciplined, penalized, or discriminated against for exercising any right under the law; and the appropriate agency to whom the employee would register a complaint regarding a violation of the law;
5. Informing and physically showing employees the location of the hazardous substance containers present at the facility with which they work and with which they are likely to work. Employees assigned plant-wide or to more than one location may be shown a representative work area where hazardous substance containers are present;
  6. The opportunity for employees to ask questions related to hazardous substances and the New Jersey Worker and Community Right to Know Act; and
  7. If a public employer chooses the option in N.J.A.C. 8:59-5.6(h) to label

containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning.

(c) Every two years a public employer shall supply all employees with the Right to Know brochure and any other material designed and provided by the Department of Health and Senior Services, the Department of Environmental Protection, and the Department of Labor to inform employees of their rights under the Act at those facilities where hazardous substances are present. All new employees, regardless of potential exposure to a hazardous substance, shall receive the Right to Know brochure developed by the above-referenced departments, within the first month of employment.]

**(a) – (c) Reserved**

(d) (No change.)

(e) Research and development laboratories shall provide their employees with appropriate hazardous substance fact sheets and available material safety data sheets [as part of their education and training program] **upon request.**

[(f) If the only hazardous substance to which an employee is exposed is toner or developer for a copying machine when the employee periodically replenishes the toner or developer in the machine, or gasoline for a motorized vehicle when the employee periodically fills the vehicle or a small can with gasoline, the public employer is not required to provide the full education and training program (including a technically qualified trainer) or biennial training to the employee if the public employer:

1. Provides the employee with the appropriate hazardous substance fact sheet and material safety data sheet on the toner or developer, or gasoline, as appropriate;
2. Reviews the hazardous substance fact sheet and material safety data sheet with the employee and explains its provisions;
3. Answers all questions by the employee about this information; and
4. Provides the employee with the Right to Know brochure developed by the Departments of Health, Environmental Protection, and Labor.

(g) An education and training program shall be given biennially (every two years) by a public employer to all employees who received the initial education and training set forth in (b) above, and who continue to be exposed or potentially exposed to products which contain hazardous chemical ingredients. The program shall be conducted by a technically qualified person. The contents of the program shall include, at a minimum:

1. Summary information about the Worker and Community Right to Know Act, including any changes in the rules. If a public employer chooses the option in N.J.A.C. 8:59-5.6(h) to label containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning; and
2. Chemical specific training for all new hazardous products and existing commonly used hazardous products. The Material Safety Data Sheets (MSDSs) and Hazardous Substance Fact Sheets (HSFSs) for these products shall be reviewed and the health effects, safety hazards, methods of controlling exposure, and appropriate work



practices for the products, shall be explained. Any new information on the MSDSs and HSFSs for the commonly used hazardous products shall be reviewed. The program shall incorporate occupational health principles relevant to the employees while discussing these products. Hands-on training in the use of appropriate personal protective equipment need not be given if it was given during the initial education and training program.]

#### 8:59-6.4 Documentation for program

(a) A public employer must maintain the following documentation of all initial and biennial Right to Know education and training programs **given to employees prior to adoption of the PEOSH Hazard Communication Standard on May 3, 2004:**

1. – 9. (No change.)

(b) [The documentation required in (a) above shall be provided by a public employer, upon request, to a Right to Know Enforcement Officer.] **(Reserved)**

(c) Rosters of attendance at initial and biennial **Right to Know** education and training programs, dates and locations of the programs, and whether it is an initial or biennial program, shall be maintained by a public employer for the duration of the employee's employment. The balance of the material required in (a) above shall be maintained until a [Right to Know Enforcement Officer] **Public Employees Occupational Safety and Health (PEOSH) inspector** reviews and [approves] **determines compliance with** the training programs [during an inspection, after which time this material may be disposed of for programs conducted prior to the year of inspection].

### SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

#### 8:59-7.2 Employer obligations

(a) - (c) (No change.)

(d) A public employer shall, upon written request, provide an employee or employee representative with a copy of a Right to Know survey, appropriate hazardous substance fact sheets and, if applicable, material safety data sheets, at no cost. This information shall be provided as soon as possible but at the [least] **latest** within five working days of the request. For a mixture, a public employer shall, upon written request, provide an employee or employee representative with a copy of the appropriate material safety data sheet.

(e) A public employer shall, upon written request, provide an employee or employee representative with the chemical name of a substance in a container labeled with a common name. This information shall be provided as soon as possible but at the [least] **latest within** five working days of the request.

(f) - (j) (No change.)

#### 8:59-8.2 Civil administrative penalty

(a) (No change.)

(b) The penalty which may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

1. Seriousness:

- i. Within the Commissioner's discretion, significant violations shall include, but not be limited to:
    - (1) (No change.)
    - (2) [Failure by a public employer to conduct an education and training program;] **(Reserved)**
    - (3) (No change.)
  - ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:
    - (1) - (10) (No change.)
    - (11) [Failure by a public employer to conduct an education and training program that complies with the requirements set forth in N.J.A.C. 8:59-6;] **(Reserved)**
    - (12) - (18) (No change.)
  - iii. (No change.)
2. - 5. (No change.)
- (c) - (h) (No change.)

## SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING, PRIVATE EMPLOYERS

### 8:59-11.3 Definitions

(a) All of the definitions in N.J.A.C. 8:59-1.3 shall apply to this subchapter except for the definition of “employer[”].”

(b) For this subchapter and for N.J.A.C. 8:59-1, 3, 5, 8, 9 and 10, “employer” shall also mean any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having [a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be:

Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services;

Major Group Numbers 20 through 39 inclusive (manufacturing industries);

Major Group Number 45 (Transportation by Air), only Group Numbers 451 Air Transportation, Scheduled, And Air Courier Services, and 458—Airports, Flying Fields, and Airport Terminal Services;

Major Group Number 46 (Pipelines, Except Natural Gas);

Major Group Number 47 (Transportation Services), only Group Numbers 473—Arrangement of Transportation of Freight and Cargo, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation;

Major Group Number 48 (Communication), only Group Numbers 481—Telephone Communications, and 482—Telegraph and Other Message Communications;

Major Group Number 49 (Electric, Gas and Sanitary Services);

Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment Equipment and Supplies, and 5093—Scrap and Waste Materials;

Major Group Number 51 (Wholesale Trade, Nondurable Goods), only Group Numbers 512—Drugs, Drug Proprietaries and Druggist's Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Nondurable Goods;

Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers (New and Used), 552—Motor Vehicle Dealers (Used only), and 554—Gasoline Service Stations;

Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants, Except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers;

Major Group Number 75 (Automotive Repair, Services, and Parking), only Group Number 753—Automotive Repair Shops;

Major Group Number 76 (Miscellaneous Repair Services), only Industry Number 7692—Welding Repair;

Major Group Number 80 (Health Services), only Group Number 806—Hospitals;

Major Group Number 82 (Educational Services, only Group Numbers 821—Elementary and Secondary Schools, and 822—Colleges, Universities, Professional Schools, and Junior Colleges, and Industry Number 8249—Vocational Schools, Not Elsewhere Classified; and

Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734—Testing Laboratories.]

**the following United States North American Industry Classification System (NAICS) codes, dated and published in 2002 by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024), subject to the specified exceptions and limitations:**

<b><u>Subsector Code or Industry Code</u></b>	<b><u>Description</u></b>	<b><u>Exceptions and/or Limitations</u></b>
<b>11</b>	<b>Agriculture, Forestry, Fishing and Hunting</b>	
<b>111998</b>	<b>All Other Miscellaneous Crop Farming</b>	<b>Limited to facilities that reduce maple sap to maple syrup</b>
<b>113310</b>	<b>Logging</b>	
<b>21</b>	<b>Mining</b>	
<b>211112</b>	<b>Natural Gas Liquid Extraction</b>	<b>Limited to facilities that recover sulfur from natural gas</b>

<b>212324</b>	<b>Kaolin and Ball Clay Mining</b>	<b>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating kaolin and clay</b>
<b>212325</b>	<b>Clay and Ceramic and Refractory Minerals Mining</b>	<b>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating clay, ceramic and refractory minerals</b>
<b>212393</b>	<b>Other Chemical and Fertilizer Mineral Mining</b>	<b>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials</b>
<b>212399</b>	<b>All Other Nonmetallic Mineral Mining</b>	<b>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals</b>
<b>22</b>	<b>Utilities</b>	
<b>22</b>	<b>Utilities</b>	
<b>31-33</b>	<b>Manufacturing</b>	
<b>31-33</b>	<b>Manufacturing</b>	<b>Except facilities engaged in wholesale distribution of:</b>
		<b>Piece goods, notions and other dry goods (broadwoven converters, piece goods converters);</b>
		<b>Meat and meat products (boxed beef); and</b>
		<b>Groceries and related products, not elsewhere classified (processed bottled water manufacturing); and except:</b>
		<b>Candy, nut and confectionery stores (chocolate candy stores preparing on premises, nonchocolate candy stores, preparing on premises);</b>

		<b>Retail bakeries (bread, cake and related products baked and sold on premises);</b>
		<b>Miscellaneous apparel and accessory stores (custom tailors, custom dressmakers);</b>
		<b>Furniture stores (custom wood cabinets, custom made upholstered household furniture, custom made nonupholstered wood household furniture);</b>
		<b>Drapery, curtain and upholstery stores (custom drapes, custom slipcovers);</b>
		<b>Miscellaneous home furnishing stores (manufacturing and selling pottery on site);</b>
		<b>Optical goods stores (optical laboratories grinding lenses to prescription); and</b>
		<b>Miscellaneous retail stores (manufacture of orthopedic devices to prescription in a retail environment);</b>
		<b>and except facilities engaged in the following services:</b>
		<b>Photocopying and duplicating services (quick printing);</b>
		<b>Business services (embroidery of advertising on shirts and rug binding for the trade, aerosol packaging, solvent recovery service contract, tobacco sheeting service, sponging, shrinking, etc., fabric for tailors and dressmakers, batik work);</b>
		<b>Armature rewinding stores (remanufacturing);</b>

		<b>Services allied to motion picture production (reproduction of video); and</b>
		<b>Dental laboratories</b>
<b>42</b>	<b>Wholesale Trade</b>	
<b>423830</b>	<b>Industrial Machinery and Equipment Merchant Wholesalers</b>	<b>Except facilities engaged in sales of industrial machinery and equipment (merchant wholesalers)</b>
<b>423840</b>	<b>Industrial Supplies Merchant Wholesalers</b>	
<b>423850</b>	<b>Service Establishment Equipment and Supplies Merchant Wholesalers</b>	
<b>423930</b>	<b>Recyclable Material Merchant Wholesalers</b>	
<b>4242</b>	<b>Drugs and Druggists' Sundries Merchant Wholesalers</b>	
<b>424310</b>	<b>Piece Goods, Notions and Other Dry Goods Merchant Wholesalers</b>	<b>Limited to merchant wholesalers of yarn, except industrial</b>
<b>424340</b>	<b>Footwear Merchant Wholesalers</b>	<b>Limited to merchant wholesalers of footwear cutstock</b>
<b>4246</b>	<b>Chemical and Allied Products Merchant Wholesalers</b>	
<b>4247</b>	<b>Petroleum and Petroleum Merchant Wholesalers</b>	
<b>424810</b>	<b>Beer and Ale Merchant Wholesalers</b>	
<b>424820</b>	<b>Wine and Distilled Alcoholic Beverage Merchant Wholesalers</b>	
<b>4249</b>	<b>Miscellaneous Nondurable Goods Merchant Wholesalers</b>	
<b>425110</b>	<b>Business to Business Electronic Markets</b>	<b>Limited to facilities engaged in the wholesale distribution of the following:</b>
		<b>Industrial supplies (business to business electronic markets);</b>

		<b>Service establishments equipment and supplies (business to business electronic markets);</b>
		<b>Scrap and waste metals (business to business electronic markets);</b>
		<b>Drugs, drug proprietaries, and druggists' sundries (business to business electronic markets);</b>
		<b>Plastic materials and basic forms sundries (business to business electronic markets);</b>
		<b>Chemical and allied products, not otherwise classified (business to business electronic markets);</b>
		<b>Petroleum and petroleum products wholesalers, except bulk stations and terminals (business to business electronic markets);</b>
		<b>Beer, wine and distilled alcoholic beverages (business to business electronic markets);</b>
		<b>Farm supplies (business to business electronic markets);</b>
		<b>Books, periodicals and newspapers (business to business electronic markets);</b>
		<b>Flowers, nursery stock and florists' supplies (business to business electronic markets);</b>
		<b>Tobacco and tobacco products (business to business electronic markets);</b>

		<b>Paints, varnishes and supplies (business to business electronic markets); and</b>
		<b>Nondurable goods, not elsewhere classified (business to business electronic markets)</b>
<b>425120</b>	<b>Wholesale Trade Agents and Brokers</b>	<b>Limited to facilities engaged in wholesale distribution of the following:</b>
		<b>Industrial supplies, not elsewhere classified (agents and brokers);</b>
		<b>Service establishments equipment and supplies (agents and brokers);</b>
		<b>Scrap and waste metals (agents and brokers);</b>
		<b>Drugs, drug proprietaries, and druggists' sundries (agents and brokers);</b>
		<b>Plastic materials and basic forms and shapes (agents and brokers);</b>
		<b>Chemical and allied products, not otherwise classified (agents and brokers);</b>
		<b>Petroleum and petroleum products wholesalers, except bulk stations and terminals (agents and brokers);</b>
		<b>Beer, wine and distilled alcoholic beverages (agents and brokers);</b>
		<b>Farm supplies (agents and brokers);</b>
		<b>Books, periodicals and newspapers (agents and brokers);</b>
		<b>Flowers, nursery stock and florists' supplies (agents and brokers);</b>



		<b>Tobacco and tobacco products (agents and brokers);</b>
		<b>Paints, varnishes and supplies (agents and brokers); and</b>
		<b>Nondurable goods, not elsewhere classified (agents and brokers)</b>
<b>44-45</b>	<b>Retail Trade</b>	
<b>441110</b>	<b>New Car Dealers</b>	
<b>441120</b>	<b>Used Car Dealers</b>	
<b>444220</b>	<b>Nurseries, Garden Center and Farm Supply Stores</b>	<b>Limited to wholesale facilities engaged in sales of the following:</b>
		<b>Farm supplies (lawn and garden supplies sold via retail method); and</b>
		<b>Flowers, nursery stock and florists' supplies (sold via retail method)</b>
<b>445310</b>	<b>Beer, Wine and Liquor Stores</b>	<b>Limited to wholesale facilities engaged in sales of beer, wine and distilled alcoholic beverages via retail method</b>
<b>446110</b>	<b>Pharmacies and Drug Stores</b>	<b>Limited to wholesale facilities engaged in sales of drugs, drug proprietaries, and druggists' sundries (drugs and sundries sold via retail method)</b>
<b>446120</b>	<b>Cosmetics, Beauty Supplies and Perfume Stores</b>	<b>Limited to wholesale facilities engaged in retail sales of cosmetics and perfumes</b>
<b>446191</b>	<b>Food (Health) Supplement Stores</b>	<b>Limited to wholesale facilities engaged in retail sales of food supplements</b>
<b>4471</b>	<b>Gasoline Stations</b>	<b>Except convenience stores with gas</b>
<b>451211</b>	<b>Book Stores</b>	<b>Limited to wholesale facilities engaged in sales of books, periodicals and newspapers (sold via retail method)</b>

<b>453220</b>	<b>Gift, Novelty, and Souvenir Stores</b>	<b>Limited to wholesale facilities engaged in sales of curios, statuary, gifts, novelties, and souvenirs (sold via retail method)</b>
<b>453910</b>	<b>Pet and Pet Supplies Stores</b>	<b>Limited to wholesale facilities engaged in sales of pets, pet supplies and tropical fish (sold via retail method)</b>
<b>453991</b>	<b>Tobacco Stores</b>	<b>Limited to wholesale facilities engaged in sales of tobacco and tobacco products (sold via retail method); and</b>
		<b>Smokers' supplies (sold via retail method)</b>
<b>453998</b>	<b>All Other Miscellaneous Store Retailers (except Tobacco Stores)</b>	<b>Limited to wholesale facilities engaged in sales of industrial supplies (sold via retail method), and plastic materials and basic forms and shapes (sold via retail method)</b>
<b>454311</b>	<b>Heating Oil Dealers</b>	<b>Limited to petroleum bulk stations and terminals engaged in the distribution of heating oil sold to final consumer</b>
<b>454312</b>	<b>Liquid Petroleum Gas (Bottled Gas) Dealers</b>	<b>Limited to petroleum bulk stations and terminals engaged in distribution of liquid petroleum gas sold to final consumer</b>
<b>48-49</b>	<b>Transportation and Warehousing</b>	
<b>4811</b>	<b>Scheduled Air Transportation</b>	
<b>486</b>	<b>Pipeline Transportation Industry</b>	
<b>487110</b>	<b>Scenic and Sightseeing Transportation, Land</b>	<b>Limited to facilities engaged in horse-drawn cabs and carriages services</b>
<b>488111</b>	<b>Air Traffic Control</b>	

<b>488119</b>	<b>Other Airport Operations</b>	<b>Except facilities engaged in flying fields operated by aviation clubs</b>
<b>488190</b>	<b>Other Support Activities for Air Transportation</b>	<b>Limited to facilities engaged in aircraft servicing and repairing</b>
<b>488210</b>	<b>Support Activities for Rail Transportation</b>	<b>Except facilities engaged in railroad switching and terminal establishments (all but short line railroads)</b>
<b>488390</b>	<b>Other Support Activities for Water Transportation</b>	<b>Except facilities engaged in water transportation services (all but lighthouse operations, piloting vessels in and out of harbors, boat and ship rental, marine salvage, lighterage, marine surveyor services, and canal operations); and</b>
		<b>Repair shops and related services engaged in ship scaling</b>
<b>488490</b>	<b>Other Support Activities for Road Transportation</b>	<b>Except terminal and service facilities for motor vehicle passenger transportation;</b>
		<b>Terminal and joint terminal maintenance facilities for motor freight transportation;</b>
		<b>Arrangement of passenger services (arrangement of carpools and vanpools); and</b>
		<b>Driving services, for example, auto or truck delivery and pilot car services</b>
<b>492110</b>	<b>Couriers</b>	<b>Limited to air courier services</b>
<b>51</b>	<b>Information</b>	
<b>51111</b>	<b>Newspaper Publishers</b>	
<b>51112</b>	<b>Periodical Publishers</b>	
<b>51113</b>	<b>Book Publishers</b>	
<b>51114</b>	<b>Directory and Mailing List Publishers</b>	<b>Except direct mail advertising services (mailing list compilers)</b>
<b>511191</b>	<b>Greeting Card Publishers</b>	

<b>511199</b>	<b>All Other Publishers</b>	
<b>512220</b>	<b>Integrated Record Production/Distribution</b>	
<b>512230</b>	<b>Music Publishers</b>	<b>Except facilities primarily engaged in music copyright authorizing use, music copyright buying and licensing, and music publishers working on their own account</b>
<b>516110</b>	<b>Internet Publishing and Broadcasting</b>	<b>Except facilities engaged in internet broadcasting, special interest web sites, entertainment sites and interactive game sites</b>
<b>517110</b>	<b>Wired Telecommunication Carriers</b>	
<b>517212</b>	<b>Cellular and Other Wireless Telecommunications</b>	<b>Except facilities engaged as ship to shore broadcasting carriers</b>
<b>517310</b>	<b>Telecommunication Resellers</b>	
<b>53</b>	<b>Real Estate and Rental and Leasing</b>	
<b>532411</b>	<b>Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing</b>	<b>Limited to facilities engaged in rental of railroad cars</b>
<b>54</b>	<b>Professional, Scientific and Technical Services</b>	
<b>541380</b>	<b>Testing Laboratories</b>	
<b>541614</b>	<b>Process, Physical Distribution, and Logistics Consulting Services</b>	<b>Except facilities engaged in management consulting services (manufacturing management, physical distribution, and site location consulting)</b>
<b>541710</b>	<b>Research and Development in the Physical, Engineering and Life Sciences</b>	<b>Except facilities engaged in commercial physical and biological research; and</b>  <b>Noncommercial research organizations (physical engineering and life sciences)</b>

<b>541890</b>	<b>Other Services Related to Advertising</b>	<b>Except facilities engaged in sign painting and lettering, showcard painting, mannequin decorating service and other advertising related business services</b>
<b>541940</b>	<b>Veterinary Services</b>	<b>Limited to facilities engaged as veterinary testing laboratories</b>
<b>56</b>	<b>Administrative and Support and Waste Management and Remediation Services</b>	
<b>5617</b>	<b>Services to Buildings and Dwellings</b>	<b>Except facilities engaged in:</b>
		<b>Ornamental shrub and tree services;</b>
		<b>Power washing building exteriors, not associated with construction;</b>
		<b>Disinfecting and pest control services (exterminating and pest control);</b>
		<b>Building cleaning and maintenance services (janitorial services, and services to building and dwellings except janitorial services);</b>
		<b>Swimming pool cleaning and maintenance; and</b>
		<b>Furnace, duct, gutter, and drain cleaning services</b>
<b>56221</b>	<b>Hazardous Waste Treatment and Disposal</b>	
<b>562910</b>	<b>Remediation Services</b>	<b>Except facilities engaged in asbestos abatement and lead paint removal contractors</b>
<b>562920</b>	<b>Materials Recovery Facilities</b>	
<b>562998</b>	<b>All Other Miscellaneous Waste Management Services</b>	<b>Except facilities engaged in sewer cleaning and rodding</b>
<b>61</b>	<b>Educational Services</b>	
<b>611110</b>	<b>Elementary and Secondary Schools</b>	
<b>611210</b>	<b>Junior Colleges</b>	

<b>611310</b>	<b>Colleges, Universities and Professional Schools</b>	
<b>611512</b>	<b>Flight Training</b>	<b>Except schools and educational services (flying instruction)</b>
<b>611513</b>	<b>Apprenticeship Training</b>	
<b>611519</b>	<b>Other Technical and Trade Schools</b>	<b>Limited to facilities engaged as vocational schools (except aviation and flight training and apprenticeship training)</b>
<b>62</b>	<b>Health Care and Social Assistance</b>	
<b>622</b>	<b>Hospitals</b>	
<b>72</b>	<b>Accommodation and Food Services</b>	
<b>722310</b>	<b>Food Service Contractors</b>	<b>Limited to facilities engaged in dining car operations on a fee or contract basis</b>
<b>81</b>	<b>Other Services (except Public Administration)</b>	
<b>81111</b>	<b>Automotive, Mechanical and Electrical Repair and Maintenance</b>	
<b>811121</b>	<b>Automotive Body, Paint and Interior Repair and Maintenance and Glass Repair</b>	
<b>811122</b>	<b>Automotive Glass Replacement Shops</b>	<b>Except facilities engaged in automotive window tinting</b>
<b>811198</b>	<b>All Other Automotive Repair and Maintenance</b>	<b>Except automotive services</b>
<b>8113</b>	<b>Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance</b>	<b>Limited to facilities engaged in welding repair</b>
<b>811420</b>	<b>Reupholstery and Furniture Repair</b>	<b>Limited to facilities engaged in aircraft upholstery repair</b>
<b>811490</b>	<b>Other Personal and Household Goods Repair and Maintenance</b>	<b>Limited to facilities engaged in pleasure boat repair</b>
<b>812320</b>	<b>Drycleaning and Laundry Services (except Coin-operated)</b>	<b>Limited to facilities engaged as drycleaning plants, except rug cleaning</b>
<b>812332</b>	<b>Industrial Launderers</b>	

**(c) In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of “employer” in (b) above is based, the Department shall modify the NAICS codes in the definition as necessary to ensure that, as required by P.L. 2003, c. 157, the generally equivalent universe of employers continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or exceptions to the NAICS codes as required to maintain the regulated universe as of August 15, 2003. The Department shall publish in the New Jersey Register a notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to the definition.**